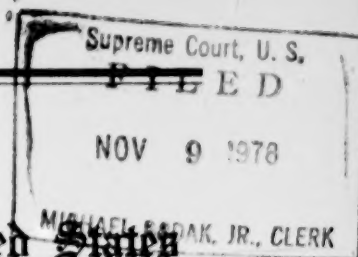

IN THE
Supreme Court of the United States
October Term, 1978



No. 78-410

LEE-HY PAVING CORP. and DAVIS E. CLEM,
Petitioners,
against

MARGUERITE T. O'CONNOR, as Administratrix of the Goods,
Chattels and Credits of DANIEL J. O'CONNOR, Deceased,
Respondent.

**SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

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Preliminary Statement

This supplemental brief is submitted on behalf of petitioners Lee-Hy Paving Corp. and Davis E. Clem to call to the attention of the Court two decisions rendered since the filing of the petition in this matter.

Recent Decisions Show That the Instant Petition for Certiorari Should Be Granted

On October 20, 1978 the Supreme Court of Minnesota decided *Savchuk v. Rush*, Docket No. 45556 (Minn., October 20, 1978). There, over the dissents of Justice Otis and two other Justices, the Minnesota Court determined to adhere to its prior ruling which approved the jurisdictional attachment of obligations arising under the liability insurance policies of non-resident defendants. By thus reaffirming a decision vacated by this Court, see *Rush v. Savchuk*, 433 U.S. 902 (1977), the Supreme Court of Minnesota has given its approval to the doctrine of *Seider v. Roth*, 17 N.Y.2d 111, 269 N.Y.S.2d 99, 216 N.E.2d 312 (1966), and has joined with New York and New Hampshire in permitting the practice against which the instant petition is directed.

The New York Court of Appeals has also spoken again on this issue, reaffirming in *Baden v. Staples*, Docket No. 455 (N.Y., October 24, 1978), its support for the *Seider* doctrine. However, as it did in both *Neumann v. Dunham*, 39 N.Y.2d 999, 387 N.Y.S.2d 240, 355 N.E.2d 294 (1976) and *Donawitz v. Danek*, 42 N.Y.2d 138, 379 N.Y.S.2d 592, 366 N.E.2d 253 (1977), the Court of Appeals upheld *Seider* on the narrow ground of *stare decisis*, observing that "it is more important that the law be settled than that it be settled 'correctly'."

It is respectfully submitted that these two decisions emphasize the importance of the Court's granting certiorari in the instant case, and providing clear guidance for state

and federal courts in this troubled area. It should be noted that both *Savchuk v. Rush* and *Baden v. Staples* cite, and were certainly encouraged by, the decision of the Second Circuit in the present case. Thus, the error committed below is repeated in other courts, and the threat to the rational basis and uniform application of the law of jurisdiction is increased. If the constitutional principles of jurisdiction set forth in *Shaffer v. Heitner*, 433 U.S. 186 (1977), are to be applied fairly and equally across the country, this Court should act to prevent their erosion by decisions such as those reached in Minnesota and New York.

Conclusion

It is respectfully requested that the Court grant the instant petition for a writ of certiorari, summarily reverse the decision below and direct the dismissal of this action.

Respectfully submitted,

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